

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 5:10-cr-00147

ANITA LOUISE BAILEY,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

On November 2, 2014, the United States Sentencing Guidelines were amended to reduce the guidelines in Section 2D1.1 by two levels for most drug offenses. (U.S.S.G. Amendment 782, Appx. C). Section 1B1.10 gives retroactive effect to these reductions and sets an effective date of November 1, 2015, for retroactively reduced sentences. On April 30, 2015, the Court entered an *Order* (Document 46) appointing the Federal Public Defender to represent the Defendant and directing the parties to respond with their positions respecting application of Amendment 782 to the Defendant's case.

The Court has received and considered the original Presentence Investigation Report (PSR), original Judgment and Commitment Order and Statement of Reasons, plea agreement, and the addendum to the PSR from the Probation Officer. In addition, the Court has reviewed the responses from the United States (Document 47) and the Defendant (Document 48), submitted pursuant to the Court's *Order*. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

Ms. Bailey pled guilty to distribution of a quantity of oxycodone, in violation of 21 U.S.C. § 841(a)(1) on November 1, 2010. The PSR attributed four hundred thirty-five (435) kilograms of marijuana equivalency to her, which at the time corresponded to a base offense level of twenty-eight (28). She received a 2-level enhancement for possession of a firearm, and a three-level reduction for acceptance of responsibility, resulting in a total offense level of 27. She was in criminal history category I. Her original guideline range was 70 to 87 months. On April 20, 2011, the Court imposed a sentence of seventy (70) months of imprisonment. Under the amended United States Sentencing Guidelines, Ms. Bailey's total offense level is 25. The revised Guideline imprisonment range is 57 to 71 months. She is, therefore, eligible for a sentencing reduction.

During her term of incarceration, Ms. Bailey completed a 40-hour drug education program and has complied with DNA collection requirements. She has not paid her special assessment, and is currently classified as temporarily exempt from participating in GED testing or in the financial responsibility program. She has received sanctions for stealing food and for being absent from an assignment.


In its response, the United States argues that Ms. Bailey's "bad conduct in prison and her extensive drug dealing activity prior to incarceration militate against a significant reduction," but notes that she will have served most of her sentence by November 1, 2015. The Defendant argues that her disciplinary issues in prison were punished administratively and should not preclude her from receiving a reduction.

Having considered Ms. Bailey's original and amended guideline ranges, the original sentencing materials, the addendum to the PSR, and the parties' responses, the Court **ORDERS** that Ms. Bailey's base offense level be reduced by two levels, to 26. After consideration of a

two-level increase for possession of a firearm pursuant to U.S.S.G. § 2D1.1(b)(1) and a three-level decrease for acceptance of responsibility, Ms. Bailey's new total offense level is **25**. Given her criminal history category of **I**, a revised guideline imprisonment range of **57 to 71 months** is established. The Court further **ORDERS** that Ms. Bailey's sentence be **REDUCED** to **60 months**. Finally, in accordance with U.S.S.G. § 1B1.10(e)(1), the Court **ORDERS** that Ms. Bailey's release date be no earlier than November 1, 2015.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to the Defendant and counsel, to the United States Attorney, to the United States Probation Office, and to the Office of the United States Marshal.

ENTER: June 24, 2015


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA